

## CHAPTER 16 ELECTION RELATED INFORMATION

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### MANDATORY ELECTION PUBLICATIONS

**“Close of Registration” Notice:** A “Close of Registration” Notice must be published in a local newspaper prior to any upcoming election. Arranging for the publication of the notice is the responsibility of the city clerk or township clerk. (MCL 168.498(3)) Notices must contain the following information:

- The publication must appear no later than the seventh calendar day before the registration deadline for the election involved.
- A “Close of Registration” Notice must include the name of the jurisdiction conducting the election; the date of the election; the deadline for registering to vote for the election; a listing of the offices that will be elected or nominated at the election; a brief description of any ballot proposals which will appear on the ballot, information on where voters can obtain the full text of any ballot proposals; the locations where registrations will be accepted; and the days and hours when persons authorized to take voter registrations will be present at those locations.
- Local jurisdictions may enter into agreements to publish joint “Close of Registration” Notices to contain costs. Such agreements may be coordinated by the county clerk at the county clerk’s discretion.

***“Notice of Election”:*** A Notice of Election must be published in a local newspaper prior to any upcoming election. Arranging for the publication of the notices is the responsibility of the city clerk or township clerk, and must include: *(MCL 168.653a)*

- The publication must appear no later than the seventh calendar day before the election involved.
- The date of the election and the hours that the polls will be open (7:00 a.m. through 8:00 p.m.).
- A listing of the offices which will be elected or nominated at the election. (The names of the candidates seeking nomination or election to the offices do *not* need to be included in the notice.)
- A brief description of any ballot proposals which will appear on the ballot. (If presenting a bond proposal, the development of the proposal description in close consultation with the bond counsel is recommended.)
- Information on where voters can obtain the full text of any ballot proposals which will appear on the ballot.
- A listing of the polling place locations. A statement regarding the accessibility of the polling place locations and the availability of voting instructions in alternative formats (audio and Braille) must be included with the listing.

While not required by law, it is recommended that the notice include information on how and where an elector may obtain an absent voter ballot for the election.

- If the Notice of Election is for an election on a millage increase, the notice must include a “county treasurer’s statement.” (MCL 211.203)
- Local jurisdictions may enter into agreements to publish joint Notices of Election to contain costs. Such agreements may be coordinated by the county clerk at the county clerk’s discretion.

***Notice of Public Logic and Accuracy Test:*** A Notice of Public Logic and Accuracy Test must be published in a local newspaper prior to any upcoming election. Arranging for the publication of the notice is the responsibility of the city clerk or township clerk. (MCL 168.798(1))

- The publication must appear at least 48 hours prior to the conduct of the test. The test must be conducted no later than the fifth day prior to the primary or election.

- A Notice of Public Logic and Accuracy Test must include the name of the jurisdiction conducting the election and the test, the date of the election, the date and time of the test, the location of the test, and a statement regarding the purpose of the test (i.e., “The Public Accuracy Test is conducted to demonstrate that the computer program used to tabulate the votes cast at the election meets the requirements of law”).

## OPTIONAL ELECTION PUBLICATIONS

**Notice of Filing Deadline:** A Notice of Filing Deadline may be published in a local newspaper prior to any upcoming election. The publication of such notice is at the discretion of the local clerk. The notice may include information on candidate qualifications, filing requirements (including number of required signatures) and any upcoming filing deadlines for offices appearing on the ballot.

**Notice to Absent Voters:** A Notice to Absent Voters may be published in a local newspaper prior to any upcoming election. The publication of such notice is at the discretion of the local clerk. The notice may include the deadline to apply for an absentee ballot, eligibility requirements and contact information for the election official accepting absentee ballot applications.

**TIE VOTES:** In those rare instances where it is revealed through the canvass that two candidates are tied for nomination or election to an office certified by the canvassing board, the tie is determined by a drawing. (A tie vote on a ballot question defeats the ballot question; a tie breaking procedure is not followed.) As an initial step, the canvassing board sets a date when the tied candidates and all interested parties can assemble to participate in the drawing. Upon the establishment of a date, the canvassing board sends notice of the meeting to the candidates and interested parties. At the meeting, the county clerk or local clerk handling the procedure writes the word “ELECTED” on a slip of paper and the words “NOT ELECTED” on an identical slip of paper. Both of the slips are folded so that the words written on them cannot be seen and the two slips are indistinguishable from one another. Each candidate then draws one of the slips from a box. The candidate who draws the slip which bears the word “ELECTED” is deemed legally elected to the office involved. (MCL 168.851; 852)

- If an affected candidate fails to appear at the meeting, the county clerk or local clerk handling the procedure has the authority to appoint any person present to draw a slip for the absent candidate. If both candidates fail to appear at the meeting, persons are appointed to draw a slip for both of the candidates.

- If the office of county clerk is involved, the drawing must be conducted before the county sheriff.
- The defeated candidate may petition for a recount of the votes cast on the office if he or she feels that a mistake has occurred in the canvass of the votes.
- It is recommended that a written record of the drawing be kept by the county clerk or local clerk handling the procedure.

## DOCUMENT RETENTION AND PUBLIC AVAILABILITY OF VOTED BALLOTS

**Canvass Documents:** Michigan election law requires the Board of County Canvassers to seal all Statement of Votes forms and Poll Books in envelopes upon the completion of the canvass. Red paper seals may be used to comply with the security requirement.

**Retention of Secured Ballots:** **The following outlines the federal and state provisions governing the retention of election ballots, voting equipment and related materials.**

- **State Retention Requirements:** During the ballot retention period specified under Michigan election law, local election officials must ensure that the seal of record used to secure 1) voting devices/tabulators and 2) ballot containers containing the used and unused ballots, programs, test decks, accuracy test results, edit listings and any other related materials *remain intact*.

The seals may be broken only after security is released by the proper authority. Ballot security for the August primary and November general election is under the authority of the Secretary of State. The Secretary of State notifies the county clerk of each county in writing after the primary and general election when ballot security is released under Michigan election law. Further ballot retention and security provisions apply to partisan ballots used in the August primary and November general election as discussed under “Federal retention requirements.”

Rules for Electronic Voting Systems require election official to secure 1) voting devices (tabulators) and 2) ballot containers, used and unused ballots, programs, test decks, accuracy test results, edit listings and any other related materials for *30-days* after the certification of the primary or election. The retention period is extended if a recount is in progress, a defect in the ballot or voting equipment is being investigated, the destruction of the ballots is stayed by an order of the court, or the Secretary of State orders the extension of the retention period.

Michigan election law provides the following allowance:

“Unless a petition for recount has been filed and the recount has not been completed, ballots, ballot labels, programs, test results, and other sealed materials may be released from their original seal after 7 days following the final determination of the board of canvassers with respect to the election at which the ballots were voted. However, the released materials shall be secured and preserved for the time period required by this act and the rules promulgated by the secretary of state.”

The above provision of law was enacted to accommodate situations where electronic voting equipment subject to the 30-day retention period explained above must be readied for an upcoming election. Essentially, the provision allows an election official responsible for the security of optical scan ballots, ballot labels, programs, test results and associated materials to break the original seal of record after seven days and transfer the materials involved to sealed ballot bags for the duration of the retention period.

- ***Federal Retention Requirements:*** If the office of President, U.S. Senator or Representative in Congress appears on the ballot, federal law requires that all documents relating to the election – including, ballots and programs used to tabulate optical scan ballots – be retained for 22 months. To comply with this requirement, the Department of State’s Bureau of Elections recommends that ballots and programs relating to federal elections be stored in *sealed ballot bags* in a secure place during the 22-month retention period. This will free the city or township’s ballot containers for use in other elections. The documents subject to the federal retention requirements must not be transferred to ballot bags for extended retention until after the retention requirements specified under Michigan election law have been fulfilled.

**POST-ELECTION ACCESS TO VOTED BALLOTS:** The Freedom of Information Act (FOIA) provides access to public records. Based on Attorney General Opinion No. 7247, issued on May 13, 2010, FOIA applies to voted ballots. While the opinion notes that voted ballots are not available for public inspection during specific times immediately after an election unless the Board of State Canvassers concurs, all ballots used in an election must be made available following the completion of the canvass, any requested recounts, or a court ordered date, whichever is later.

The opinion goes on to state that Rule 168.790(19) that empowers the Board of State Canvassers as the official source to grant access to ballots cannot operate to totally exempt ballots from FOIA. Only a statute can exempt a document from FOIA, not an administrative rule.

When a federal office is on the ballot there is a 22-month ballot retention period. This requirement comes from the Voting Rights Act, a federal law. The Department of Justice permits access to ballots during this time period but only if the review is conducted under more stringent constraints. The purpose of the 22-month retention is to preserve ballots as evidence in the event of a civil or criminal trial. To maintain the purity of the chain of custody, it is imperative that no one, other than an election official or their staff, handles the ballots or be left alone in a room with the ballots.